In re APPLICATION BY LAYCOCK & ONG.

[O. C. J. (Taylor, J.) February 20, 1954]

[Singapore — Originating Motion No. 57 of 1953]

Landlord and tenant — Control of Rent Ordinance, 1953, ss. 7 and 9 — Construction — Powers of the Rent Conciliation Board.

The general scheme of the Control of Rent Ordinance, 1953, is to maintain the rents of pre-war buildings at the pre-war rent plus expressly authorised additions; this is subject to the discretionary powers of the Rent Conciliation Board to authorise further increase, or order reduction, where the circumstances of the particular letting so require.

[Editorial Note: In Tan Khoo Hong v. Alice Thornby (Singapore — O.M. No. 65 of 1953), the grounds of judgment of which were given on 31st March 1954, Murray-Aynsley, C.J. considered this judgment and said that he did not agree with the construction placed upon the proviso to section 9(1)(b) by Taylor, J. He held that the proviso is of general application and is not limited to cases in which section 7(1)(c) applies.]

Case referred to:—

(1) *The British Malaya Trustee & Executor Co. Ltd. v. Tan Kang Meng* (1953) M.L.J. 145.

APPLICATION.

Dr. C. H. Withers-Payne for the tenants.

C. L. Duff for the landlord.

Cur. Adv. Vult.

Taylor, J.: — This is an application for review of certain proceedings of the Rent Conciliation Board under section 13 of the Control of Rent Ordinance, 1953, which creates a statutory remedy in the nature of *certiorari*.

The subject matter is Nunes Building, a large office block in the centre of the city, of which the various floors and rooms are let to a number of business firms. The landlord served on each tenant a notice of application to raise the rent and the Board set them all down for hearing at one time, so as to deal with the building as a whole. This was proper. The applications were all in the same form and merely applied to raise the rent from the present rent to a new figure, without any particulars. At the commencement of the consolidated hearing, counsel for the landlord applied to amend the amounts claimed in some of the applications; in at least one case the amendment asked for a smaller increase than the application as originally drawn; the amendments were allowed, without objection. This led to a misunderstanding; counsel for the tenants say that they merely accepted the amendments, as such, but the Board took it that they assented to the proposition that the new rents asked for were within the limits allowed by the Ordinance of 1953 which had recently come into operation.

The standard rents of the various lettings were not stated. Counsel for the landlord said that the present trustees did not know what the rents were in 1939 and therefore could not prove the standard rents. The Board should have rejected this submission. It was not suggested that the previous trustees had ever been asked whether their records survived. There are many other sources from which the information could probably have been obtained.

Several witnesses were called. They produced plans and measurements of the building in question and of similar buildings in the vicinity and proved the current rents of these, some of which had been fixed by the Board by consent orders; they also gave evidence of the costs of some repairs.

The Board then fixed the rents at figures very slightly less than the amounts applied for by the landlord.

In their grounds of decision the Board "found as a fact that the current rents were at a level which justified increase to a just and proper level." They based this conclusion mainly on the rents which they (or their predecessors) had fixed for a similar building in the same locality. They had regard to recent substantial repairs and to the facts that the landlord paid the assessment and other outgoings.

In fixing the rents the Board had in mind the limits imposed on them by the new Ordinance; they understood from Counsel for the landlord that the increases asked for would not exceed the maximum allowed.

This is an allusion to a previous decision of the Board[1], which is reported in (1953) M.L.J. at page 146, where the then President expressed his view of the effect of the new Ordinance. The main purpose of this motion is to ascertain the true construction of the sections which define the powers of the Board.

Where, as here, the question is one of the construction of an amending statute it is important to examine first the previous law and then to compare it with the new law so as to appreciate the effect of changes. Under the Ordinance of 1947:—

"Premises" included anything built before that Ordinance.

"Standard Rent" meant:—

Rent fixed by the Board before "this Ordinance," or (if not so fixed);

The pre-war rent, or (failing that);

The first rent.

A landlord was empowered, by section 7, to raise the rent, without leave of the Board, in two cases, viz.:—

(a) where the current rent was below the standard rent, and

(c) where the premises were let before 2nd January 1941 and there had been no increase since then, by amounts from 5% to 25%, according to the type of premises as set out in the Schedule,

Provided that in such a case the Board could fix the amount of the increase and the landlord could not then increase the rent by more than the amount fixed by the Board.

It is clear that the legislature regarded the class of premises specified in paragraph (c) (which may be called shortly "the specified class") as a special class where some latitude might be allowed to landlord.

As regards other classes of property the Board had power, under section 9(1)(b), to fix rent at, below or above the current rent, as seemed to them just and proper.

The expression "current rent" was not defined and therefore had its ordinary meaning which was the actual rent at the time of the application.

The broad effect was to give power to maintain, raise or lower the rent of controlled premises. This discretion was unlimited in the sense that it was not subject to any artificial limit expressed in figures but that does not mean that it was an absolute or arbitrary discretion. It was a judicial discretion to carry out the purposes of the Ordinance.

Pausing here to look more closely at section 9(1)(b) — it empowered the Board to fix the rent below, at, or above the current rent, as seemed just, or to refuse to make an order. I do not know what difference there would be between fixing the existing rent and refusing to alter it. As to the effect of the words "below, at or above" — suppose they were omitted; the section would then read: — "...may fix the rent.....as seems just." This is an unfettered discretion. But it might have been argued, from the general tenor of the statute, that it was not intended that the Board should reduce rents. That may be true in general but there are exceptions; if, for instance the property had deteriorated it might be just to reduce the rent; the words "below, at or above" clearly exclude any possible doubt about the discretion covering both enhancement and reduction. In short, they are words of emphasis.

Under the Ordinance of 1953 :—

"Premises" includes anything built before the 1947 Ordinance. The wording is changed so as to preserve the meaning and effect. What were new buildings are still "new" and exempt from control.

"Standard rent" is defined in the same words but the effect of the first limb of the definition — "fixed.... before this Ordinance" — is to make a real change. All rents fixed between 1946 and 1953 are now "standard;" most of those fixings involved increases. For other buildings the standard rents remain the same, viz. the pre-war rent or the first rent. Why the legislature made this change does not readily appear from the Ordinance itself but the result is clear. It may well involve some anomaly. I think that the Board should bear this in mind and that the anomaly will sometimes make their task more difficult.

Section 7 and the Schedule are re-enacted, word for word, with two additional clauses; these enable a landlord, subject to the approval of the Board, to increase rent if he had made compulsory or agreed improvements or become liable for increased assessment. In one sense these new clauses are unnecessary because the Board could have allowed increases on these grounds in exercise of their general discretion under section 9 of either Ordinance; they make the law more explicit, rather than alter its substance. Clause (d) is particularly instructive; even if the landlord has improved the property he cannot raise the rent unless the tenant agreed to the making of the improvement.

Section 9 is modified. The Board now have power to fix rent at, below or above the current or standard rent as seems to them just and proper,

Provided that they shall not fix the rent of any premises at a figure exceeding the current or standard rent plus twice the increase permitted under section 7 (1)(c).

The difficulties arise from this proviso. Three or four different constructions were put forward during the argument. To set them all out would make this judgment unduly lengthy and complex. I will therefore state the construction which, on careful consideration, seems to me to be the true construction, indicating the reasons for my view. The fact that several quite different constructions were propounded by counsel shews that the statute is not clear. The "golden rule" does not apply and the true construction must be, to some extent, artificial.

This legislation has had an unfortunate history. It was born of the much criticised Defence of the Realm Act by the stress of the 1914 war. Fundamentally it is a simple anti-profiteering measure, like price-control of sugar, but the subject matter is somewhat technical and on many points the legislation has always been unstable and obscure.

The earliest statute in the Colony was that of 1939 and its main aim was to peg rents at the pre-war level. Landlords had no power to raise rents except with the leave of the Board.

There was little new construction during the war or in 1946. It was obviously impractical to build at post-war costs and let at pre-war levels of rent. Landlords were naturally slow to effect repairs. The population was increasing and the shortage of housing was acute. This, briefly, was the position in August 1947 when the second Ordinance was passed. Its main effects were to exempt from control virtually all post-war buildings and to permit certain increases by landlords, not exceeding 25%, where premises had been

let before 1941 and the rent had not since been increased. As rent could not have been increased, except by leave of the Board, the specified class of premises, embraced nearly all pre-war buildings. As regards the remainder, whose rents had been raised by the Board between 1939 and 1947, the Board had a discretion, with no expressed limitation, to permit such further increase, if any, (or on occasion to order reduction) as they thought just and proper.

Another six years elapsed. During that time most landlords exercised their powers and raised rents up to the scheduled limits.

Then the new Ordinance was passed. The new section 7 is in the same words but the situation, and therefore the effect, have materially changed. The specified class has shrunk from virtually all pre-war buildings to the small proportion whose rents have not been raised since 1941. No further powers are given to landlords. The general position is now comparable to that in 1939. Rents of nearly all pre-war buildings are pegged, at the pre-war rent plus a percentage, subject to the powers of the Board. The vital question is : — What are the powers of the new Board?

The general power under section 9(1)(b) is re-enacted with two additional words : — "..... to fix rent below, at or above the current or standard rent." Below or above either of two levels. This is clear. It is even more emphatic than before. The discretion is not subject to any artificial limitation. Then comes the proviso.

"Provided that the Board shall not, under this paragraph, fix the rent at a figure which exceeds the current or standard rent, plus twice the increase permitted under section 7(1)(c)."

This proviso is new. I hope it is unique.

From the tenor of the section as a whole, it appears that the proviso is restrictive of the generality of the substantive enactment to which it is annexed.

The proviso refers, in terms, to paragraph (c) of section 7(1). That paragraph also consists of a substantive enactment and a proviso. We have therefore a proviso to a proviso.

The main question turns on the proviso to section 9.

This proviso repeats the new expression "current or standard rent" which first appeared in the substantive enactment 9(b). The context is different. The Board shall not fix a rent which exceeds the current or standard rent by more than a specified amount. Here they are not words of emphasis. They are words of limitation. In most cases the current and standard rents are now different. The manifest object is to fix the height of a ceiling. This proviso fixes it, not by reference to the floor of the building but by reference to the floor of a moving lift.

There was considerable argument on this point. All counsel agreed that if such an expression occurred in a contract the clause would be void for uncertainty. A statutory proviso cannot be so avoided. The proviso is definitely ambiguous and an ambiguity must be resolved. Nothing can be added to a statute but, if it is absolutely necessary a few words may be discarded. It is impossible to give a definite meaning to this proviso without discarding either "standard" or "current" Rents have been revised with reference to the standard rent all through the English legislation and through most of our legislation, including this Ordinance. It is true that section 7 of the Ordinance of 1947 authorised increases with reference to current rent only but, as I have found, when that Ordinance began, nearly all current rents were in fact standard. It is therefore conformable to the general intention of the legislature to apply "standard" and disregard "current." On these grounds I rule that the effect of the proviso is to prevent the Board from fixing the rent of any premises to which the proviso applies at a figure exceeding the aggregate of the standard rent and the addition authorised by the concluding words (plus any additions authorized by the other parts of the section).

The next question is : — To what premises does the proviso apply?

The expression used is "any premises" but these words occur not in the substantive enactment but in a restrictive proviso. They refer directly to the increase permitted under section 7(1)(c) which deals with the specified class of premises only. The schedule never applied to any other class. In both Ordinances it is headed : — "Section 7." If the legislature meant to apply the schedule to all controlled premises they adopted a strangely obscure and roundabout way of saying so; they could have said so in the first and substantive part of paragraph (b) or, in the proviso, they could have referred directly to the Schedule. This part of the statute is not clearly arranged but there is no further ambiguity. On careful examination of the whole of the two sections in both Ordinances I have come to the conclusion that proviso 9 means this. In fixing the rent of premises of the specified class the Board may add to the standard rent not more than twice the amount which the landlord could add without an order.

As regards buildings not included in the specified class the discretion of the Board is not subject to any technical limitation but that is not to say that their discretion is at large or arbitrary. On the contrary it

is a judicial discretion to be exercised in furtherance of the objects and purposes of the legislature as expressed in, or implied by, the provisions of the statute. The manifest object is to stabilise rents of pre-war buildings at standard plus the specifically authorised additions where these apply. The Board are expressly empowered to reduce rents, as for instance in case of deterioration, and they may use their discretion as to increase in respect of agreed or compulsory improvements or on other special grounds. In every such instance they should require the applicant, whether he be the landlord or the tenant, to prove his case by proper evidence of all the relevant facts and these are facts relating to the particular letting, — not to extraneous circumstances. The idea that "just and proper" means a fair competitive rent at the present day is inconsistent with the Ordinance. Economic rents are governed mainly by supply and demand. This legislation is based on the fact that wars have both increased the demand and reduced the supply; its main object is to curtail the operation of the economic law of supply and demand. This policy may be described as pro-tenant but it is not anti-landlord. The continued exemption of the new buildings shows that, however slow it may be, the legislation is, in spirit, temporary. The ultimate aim is abolition of control but meantime the legislature have thought it in the interests of the public as a whole to impose these restrictions; they may be hard on some landlords but the law must be administered according to its tenor, which it is my function to declare. My opinion is founded exclusively on the statutes themselves. I declined to read certain legislative proceedings of which evidence was tendered, as I think wrongly, on this motion and I have not referred even to the "objects and reasons" (though they may not be inadmissible).

If my views accord with the true intention of the legislators it is because that intention was expressed in their enactments. If my opinion is in any respect at variance with that intention it is because they failed to express it with sufficient clearness.

In the group of applications now under review the principal facts proved were these. The total of the various rents was about $2,250 a month. The owners had spent $10,000 on the roof and $2,000 on other repairs. They paid the assessment and provided certain services as a sweeper and a lift man. The current rents were lower than those of certain comparable offices which had been fixed by the Board, in particular one let, *en bloc,* on a ten-year lease; these fixings were, however, by consent.

The grounds of decision show that in the view of the Board the Ordinance imposed a limit; subject to which they were to fix fair rents, by which they understood fair commercial rents, and they sought to ascertain these partly by reference to yield and partly by comparison with the rents of other buildings; they did not, however, obtain the proper materials to apply either test.

First as to repairs — unless a landlord keeps a roof over his tenant's heads he is not entitled to any rent whatever. There was no attempt to shew whether the restored roof is likely to last for five years or twenty-five. Secondly as to yield, the gross yield of $2,550 is quite meaningless in the absence of any indication as to what the building cost. Thirdly the outgoings, which the Board especially mention, are merely a deduction from gross yield and equally meaningless. The largest item is assessment which is a separate matter under the statute. I notice in passing that these outgoings included the commission which the landlord pays to his rent collector; this ought not to affect the tenants.

The landlord may be receiving a poor return on his investment, or a very handsome one; no inference either way can be drawn from the evidence adduced and in any event it would be irrelevant to these applications.

A ten year lease involves many factors which are different from those applicable to a monthly tenancy. The Board did not consider these.

Consent orders may be misleading. A man might need an office and it might well happen that his only choice was to promise to consent to an application for increase by a pre-war landlord or to wait until one of the new "skyscrapers" is finished, and these will be uncontrolled. He might genuinely prefer to accept an immediate offer. Whether it would be proper for the Board to make a consent order in such a case is a doubtful question on which I could not express an opinion unless the full facts were before me but it is entirely wrong to take such an order as a standard of comparison for another building.

The policy of the Board, as exemplified in these proceedings, is founded on a mistaken view of the principles on which their discretion should be exercised. Their policy, if continued, would gradually equate the rents of pre-war buildings to those of post-war buildings which cost two or three times as much to build; this would give a large "unearned increment" to pre-war owners; one of the objects of the present Ordinance is to control that factor. That law assumes that pre-war rents were fair.

As regards the supposed "ceiling" the Board erred technically on a very difficult point of construction. As regards other matters they did not sufficiently regard

either the purposes or the provisions of the law. They must begin again. The principle of the Ordinance may be obscurely expressed but it really comes to this: — Pre-war buildings — pre-war rents, plus the scheduled percentage, plus increased assessment and, in some cases, a discretionary allowance for compulsory or agreed improvements. This covers all ordinary cases; it is not exhaustive; the Board have a discretion to deal with special cases but the margin for the exercise of that discretion is not wide and it must be exercised on the principles to be gathered from the Ordinance. One of these clearly is that any special grounds for allowing an increase must relate to the particular building. For example, evidence that the pre-war rent of the building in question had been fixed in special circumstances and was abnormal at that time might well be relevant.

The whole group of applications must go back to the Board to be reconsidered *ab initio* and decided with regard to the construction of the Ordinance and the principles of its application set out in this judgment.

Order accordingly.

Solicitors for the tenants: *Drew & Napier.*

Solicitors for the landlords: *Donaldson & Burkinshaw.*

Re MOHAMED YUSOFF MEERA HUSSAIN & ANOR. TRADING AS FEDERAL DRUG HOUSE.

[O. C. J. (Spenser Wilkinson, J.) January 11, 1954]

[Penang — Bankruptcy No. 8 of 1952]

Bankruptcy Ordinance — Offences under s. 114 — What evidence required before debtor can be sentenced to imprisonment — Notes of public examination are not evidence unless properly put in.

This was a motion by the Official Assignee asking for an order that the bankrupts be ordered to undergo imprisonment under the provisions of section 114 of the Bankruptcy Ordinance on the grounds (1) that having been engaged in trading or other business they failed to keep such books of account as to sufficiently disclose their business transactions and financial position within one year immediately preceding the bankruptcy contrary to section 114(a) of the Bankruptcy Ordinance and (2) that they in 1951 and subsequently contracted debts payable in bankruptcy to various persons without having any reasonable ground or expectation of being able to pay contrary to section 114(c) of the Bankruptcy Ordinance. The motion was supported by an affidavit by the Assistant Official Assignee in which reference was made to the public examination of the debtors but the notes of the examination were not exhibited to the affidavit.

Held: (1) as the notes of the examination were not exhibited to the affidavit they were not properly before the Court and therefore there was insufficient evidence before the Court to enable it to make an order of imprisonment against the debtors; (2) in most cases the admissions by a debtor made in his public examination are not sufficient evidence by themselves to justify an order of imprisonment; (3) in proceedings under section 114(c) of the Bankruptcy Ordinance the particular debt or debts which are alleged to have been contracted without any reasonable expectation of being able to pay should be specified in the charge; (4) before a debtor can be sentenced to imprisonment for failure to keep books of account under section 114(a) of the Bankruptcy Ordinance, there must be evidence that he was guilty of such commercial immorality or such negligence in connection with the keeping of his books as to justify the imposition of the sentence of imprisonment.

Cases referred to:—

(1) *Re Khoo Siok Wan and Sarkies Johannes & Co.* 11 S.S.L.R. 19.

(2) *Re Chops Loh Ban Chuan and Chuan Bee — Ex parte Lim Eng Hoe* (1933) S.S.L.R. 585; (1933) M.L.J. 286.

(3) *Pollard's case* L.R. 2 P.C. 106.

(4) *Chong Hong Kian v. Sir Francis T. Piggot* (1909) A.C. 312.

(5) *In re Caldwell* 2 Ch. App. 26.

(6) *Poi Eng Lian v. The Official Assignee, F.M.S.* (1947) M.L.J. 126.

(7) *Re Mohamed Madar Sahib* 12 S.S.L.R. 10.

(8) *Re Chua Yew Chin, Chop Ho Lee* Singapore — Bankruptcy No. 23 of 1901 (unreported).

(9) *Ex parte Reed* 17 Q.B.D. 244.

(10) *In re Heap,* 4 Morr. 314.

(11) *Re Ang Teck Say* (1933) S.S.L.R. 408 at page 413; (1934) M.L.J. 25 at page 28.

BANKRUPTCY.

Balwant Singh (Asst. Official Assignee) for Official Assignee.

R. D. Hume for debtors.

Cur. Adv. Vult.

Spenser Wilkinson, J.: — This was a Motion by the Official Assignee asking for an Order that the two bankrupts be ordered to undergo imprisonment under the provisions of section 114 of the Bankruptcy Ordinance on the following grounds:—

1. That you having been engaged in trading or other business have not kept such books of account as to sufficiently disclose your business transactions and financial position within one year immediately preceding your bankruptcy contrary to section 114(a) of the Bankruptcy Ordinance (S.S. Cap. 45).

2. That you have in 1951 and subsequently contracted debts provable in your bankruptcy to various persons without having any reasonable ground or expectation of being able to pay contrary to section 114(c) of the Bankruptcy Ordinance (S.S. Cap. 45).

The Motion was supported by a short affidavit by the Assistant Official Assignee in which he made reference to the public examination of the debtors.